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| 10/709,183 | 04/20/2004 | J. Dirk Vermeulen | 71528-0003 | 1745 |
| 20915 | 7590 | 11/14/2006 | EXAMINER | |
| MCGARRY BAIR PC 171 MONROE AVENUE, N.W. SUITE 600 GRAND RAPIDS, MI 49503 | | | BAXTER, ZOE E | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3735 | |

DATE MAILED: 11/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|------------------------|---------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 10/709,183 | VERMEULEN ET AL. |
| | Examiner | Art Unit |
| | Zoe E. Baxter | 3735 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-12, 14, 15 and 18-25 is/are rejected.
- 7) Claim(s) 13, 16, 17 and 26-31 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 20 April 2004 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/20/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 18, 19 and 20 are rejected under 35 U.S.C. 102(a) as being anticipated by Pruche et al. (PGPUB US 2003/0108542 A1). Pruche et al teach the use of an indicator for characterizing human skin condition (page 1 paragraph 0007) comprising: a flowable carrier able to be applied to human skin (page 1 paragraph 0008), at least one dye soluble with oil found on human skin (page 1 paragraph 0016), visually changeable when in solution with oil on the human skin (page 1 paragraph 0014), any visual change is proportional to the amount of oil present in the solution (page 1 paragraph 0008) and when the indicator is applied to human skin and the dye contacts and reacts with the oil in the area, the indicator will display a visual indication of the skin condition in the area based on the amount of the oil in the area (page 1 paragraph 0008).

3. Referring to claim 18 Pruche et al. teach a reference where by the user can characterize the skin condition with the assistance there of (page 6 paragraph 0095).

4. Referring to claim 19 Pruche et al. teach a reference comprising a chart having indicia representative of a plurality of skin conditions and captions associated with each of the plurality of skin conditions whereby a user can align the chart in register with a

particular area of the activated indicator and compare the indicia on the chart with the particular area of the indicator to determine the skin condition as described by the caption associated therewith (page 6 paragraph 0095).

5. Referring to claim 20 Pruche et al. teach the flowable carrier is spreadable (page 1 paragraph 0008) the inventor describes using a drop of the substance implying the substance is a liquid.
6. Claims 24, 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Parfenov et al. (US Patent No. 6365363). Parfenov et al. disclose a method of employing a flowable indicator comprising the following steps
 - a. Applying a flowable indicator to the skin (column 2 lines 34-36) wherein the indicator is reactive with at least one substance found on the skin (column 1 lines 9-10)
 - b. Activating the flowable indicator through a reaction of the indicator with one substance found on the skin after a period of time (column 2 lines 36-37)
 - c. Comparing the activated flowable indicator to a reference to characterize condition (column 4 lines 47-53)
7. Referring to claim 25 Parfenov et al. teach a step of waiting for the flowable indicator to activate (column 2 lines 63-65).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 2-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pruche et al. in view of Gupta (PG PUB 2004/0067890 A1). Pruche et al. teach the use of an indicator for characterizing human skin condition (page 1 paragraph 0007) comprising: a flowable carrier able to be applied to human skin (page 1 paragraph 0008), at least one dye soluble with oil found on human skin (page 1 paragraph 0016), visually changeable when in solution with oil on the human skin (page 1 paragraph 0014), any visual change is proportional to the amount of oil present in the solution (page 1 paragraph 0008) and when the indicator is applied to human skin and the dye contacts and reacts with the oil in the area, the indicator will display a visual indication of the skin condition in the area based on the amount of the oil in the area (page 1 paragraph 0008) and the carrier comprises water (page 4 paragraph 0071). Pruche et al. fail to teach the flowable at least one rheology modifier. Gupta teaches the use of a rheology modifier (page 4 paragraph 0050). It would be obvious to one skilled in the art at the time of the invention to modify the invention of Pruche et al. to include a rheology modifier similar to that of Gupta in order to modify the viscosity of the liquid. Gupta also states that rheology modifiers are beneficial ingredients (page 4 paragraph 0048).

10. Referring to claim 3 as stated above Pruche et al teach the use of an indicator for characterizing skin condition however, Pruche et al. fail to teach at least one rheology modifier comprises a ceramic material. Gupta teaches the use of various clays as rheology modifiers including Bentonite (page 4 paragraph 0050), Bentonite clay is a

ceramic substance since it is an inorganic nonmetallic substance formed due to the action of heat (Bentonite is formed of volcanic ash). It would be obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Pruche et al. to include a rheology modifier comprising a ceramic similar to that of Gupta since Gupta states it is a beneficial ingredient (page 4 paragraph 0048).

11. Referring to claim 4 as stated above Pruche et al teach the use of an indicator for characterizing skin condition however, Pruche et al. fail to teach at least one rheology modifier comprises a clay material. Gupta teaches the use of various clays as rheology modifiers (page 4 paragraph 0050). It would be obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Pruche et al. to include a rheology modifier comprising a ceramic similar to that of Gupta since Gupta states it is a beneficial ingredient (page 4 paragraph 0048).

12. Referring to claim 5 as stated above Pruche et al teach the use of an indicator for characterizing skin condition however, Pruche et al. fail to teach at least one rheology modifier comprises Bentonite clay. Gupta teaches the use of various clays including Bentonite as rheology modifiers (page 4 paragraph 0050). It would be obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Pruche et al. to include a rheology modifier comprising a ceramic similar to that of Gupta since Gupta states it is a beneficial ingredient (page 4 paragraph 0048).

13. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pruche et al. in view of Gupta and further in view of Meine et al. (PGPUB US 2003/0171247 A1). As stated above stated above Pruche et al teach the use of an

indicator for characterizing skin condition however and Gupta teaches a flowable carrier comprising water and at least one rheology modifier. Neither Pruche et al. nor Gupta teach a rheology modifier comprising a polymer material. Meine et al. teach the use of a rheology modifier, which comprises a polymer (page 12 paragraph 0196). It would be obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Pruche et al. to include a rheology modifier comprising a polymer similar to that of Meine et al. in order to thicken the solution as taught by Meine et al. (page 12 paragraph 0196).

14. Referring to claim 7 as stated above Pruche et al teach the use of an indicator for characterizing skin condition however and Gupta teaches a flowable carrier comprising water and at least one rheology modifier. Neither Pruche et al. nor Gupta teach a rheology modifier comprising a high molecular weight homo- or copolymer of acrylic acid crosslinked with a polyalkenyl polyether. Meine et al. teach a rheology modifier comprising a high molecular weight homo- or copolymer of acrylic acid crosslinked with a polyalkenyl polyether (page 12 paragraph 0196). It would be obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Pruche et al. to include a rheology modifier comprising a high molecular weight homo- or copolymer of acrylic acid crosslinked with a polyalkenyl polyether since it is a suitable thickener as taught by Meine et al. (page 12 paragraph 0196).

15. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pruche et al., Gupta and Meine et al. as applied to claim 6 above, and further in view of Minnix (US 6309655). As explained in paragraph 8 Pruche et al., Gupta and Meine et

al. teach the use of a skin indicator for characterizing skin condition comprising water and at least one rheology modifier comprising a polymer material. They fail to teach the rheology modifier to comprise methylcellulose. Minnix teaches a cosmetic comprising methylcellulose (column 10 line 31). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the Pruche et al. to include a rheology modifier comprising methylcellulose similar to that of Minnix since it is an acceptable thickener as stated by Minnix (column 10 line 26).

16. Referring to claim 9 as explained in paragraph 8 Pruche et al., Gupta and Meine et al. teach the use of a skin indicator for characterizing skin condition comprising water and at least one rheology modifier comprising a polymer material. They fail to teach the rheology modifier to comprise methylcellulose. Minnix teaches a cosmetic comprising polyvinyl alcohol (column 10 line 31). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Pruche et al. to include a rheology modifier comprising polyvinyl alcohol similar to that of Minnix since it is an acceptable thickener as stated by Minnix (column 10 line 26).

17. Claims 10, 11, 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pruche et al. in view of Gott et al. (US Patent No. 6733766). Pruche et al. teach the use of an indicator for characterizing human skin condition (page 1 paragraph 0007) comprising: a flowable carrier able to be applied to human skin (page 1 paragraph 0008), at least one dye soluble with oil found on human skin (page 1 paragraph 0016), visually changeable when in solution with oil on the human skin (page 1 paragraph 0014), any visual change is proportional to the amount of oil present in the

solution (page 1 paragraph 0008) and when the indicator is applied to human skin and the dye contacts and reacts with the oil in the area, the indicator will display a visual indication of the skin condition in the area based on the amount of the oil in the area (page 1 paragraph 0008) and the carrier comprises water (page 4 paragraph 0071). Pruche et al. fail to teach the indicator comprises at least one opacifier. Gott et al. teach the use of an opacifier in a color changing cosmetic (column 2 lines 34-37). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Pruche et al. to include an opacifier similar to that of Gott et al. since Gott et al. state that the most preferable starting color of the solution would be white or slightly off-white in order to better identify a color change (column 2 lines 34-39).

18. Referring to claim 11 Pruche et al. teach the use of an indicator for characterizing human skin condition (page 1 paragraph 0007) comprising: a flowable carrier able to be applied to human skin (page 1 paragraph 0008), at least one dye soluble with oil found on human skin (page 1 paragraph 0016), visually changeable when in solution with oil on the human skin (page 1 paragraph 0014), any visual change is proportional to the amount of oil present in the solution (page 1 paragraph 0008) and when the indicator is applied to human skin and the dye contacts and reacts with the oil in the area, the indicator will display a visual indication of the skin condition in the area based on the amount of the oil in the area (page 1 paragraph 0008) and the carrier comprises water (page 4 paragraph 0071). Pruche et al. fail to teach an opacifier comprising titanium dioxide. Gott et al. teach the use of titanium dioxide as a component of an opacifier (column 2 line 37). It would be obvious to one of ordinary skill in the art at the time of

the invention to modify the indicator of Pruche et al. to include titanium dioxide similar to that of Gott et al. since Gott et al. states that it is a preferred method of producing a white substance (column 2 lines 35-37).

19. Referring to claim 14 Pruche et al. teach the use of an indicator for characterizing human skin condition (page 1 paragraph 0007) comprising: a flowable carrier able to be applied to human skin (page 1 paragraph 0008), at least one dye soluble with oil found on human skin (page 1 paragraph 0016), visually changeable when in solution with oil on the human skin (page 1 paragraph 0014), any visual change is proportional to the amount of oil present in the solution (page 1 paragraph 0008) and when the indicator is applied to human skin and the dye contacts and reacts with the oil in the area, the indicator will display a visual indication of the skin condition in the area based on the amount of the oil in the area (page 1 paragraph 0008) and the carrier comprises water (page 4 paragraph 0071). Pruche et al. fail to teach that at least one dye comprises a Drug and Cosmetic (D&C) colorant. Gott et al. teach the colorants comprise a D&C colorant (column 6 lines 51-56). It would be obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Pruche et al. to include a D&C colorant similar to that of Gott et al. since Gott et al. state organic D&C colorants are preferable (column 6 lines 51-52).

20. Referring to claim 15 Pruche et al. teach the use of an indicator for characterizing human skin condition (page 1 paragraph 0007) comprising: a flowable carrier able to be applied to human skin (page 1 paragraph 0008), at least one dye soluble with oil found on human skin (page 1 paragraph 0016), visually changeable when in solution with oil

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on the human skin (page 1 paragraph 0014), any visual change is proportional to the amount of oil present in the solution (page 1 paragraph 0008) and when the indicator is applied to human skin and the dye contacts and reacts with the oil in the area, the indicator will display a visual indication of the skin condition in the area based on the amount of the oil in the area (page 1 paragraph 0008) and the carrier comprises water (page 4 paragraph 0071). Pruche et al. fail to teach one of the colorants comprises at least of violet 2, yellow 11 and red 17. Gott et al. teach the use of violet 2 (column 6 line 62). It would be obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Pruche et al. to include D&C violet 2 similar to that of Gott et al. in order to color the indicator.

21. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pruche et al. in view of Rey et al. (US Patent No. 3993742). Pruche et al. teach the use of an indicator for characterizing human skin condition (page 1 paragraph 0007) comprising: a flowable carrier able to be applied to human skin (page 1 paragraph 0008), at least one dye soluble with oil found on human skin (page 1 paragraph 0016), visually changeable when in solution with oil on the human skin (page 1 paragraph 0014), any visual change is proportional to the amount of oil present in the solution (page 1 paragraph 0008) and when the indicator is applied to human skin and the dye contacts and reacts with the oil in the area, the indicator will display a visual indication of the skin condition in the area based on the amount of the oil in the area (page 1 paragraph 0008) and the carrier comprises water (page 4 paragraph 0071). Pruche et al. fail to teach the oil comprises sebum. Rey et al. teach the oil (column 4 line 15) comprises sebum (column 2 line

26). It would be obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Pruche et al. to include sebum similar to that of Rey et al. since the oil on human skin includes sebum.

22. Claims 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pruche et al. in view of Minnix. Pruche et al. teach the use of an indicator for characterizing human skin condition (page 1 paragraph 0007) comprising: a flowable carrier able to be applied to human skin (page 1 paragraph 0008), at least one dye soluble with oil found on human skin (page 1 paragraph 0016), visually changeable when in solution with oil on the human skin (page 1 paragraph 0014), any visual change is proportional to the amount of oil present in the solution (page 1 paragraph 0008) and when the indicator is applied to human skin and the dye contacts and reacts with the oil in the area, the indicator will display a visual indication of the skin condition in the area based on the amount of the oil in the area (page 1 paragraph 0008) and the carrier comprises water (page 4 paragraph 0071). Pruche et al. also teaches the solution is spreadable. Pruche et al. fail to teach the carrier is peelable. Minnix teaches that the carrier can be peelable (column 1 lines 29-33). It would be obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Pruche et al. to include a peelable mask similar to that of Minnix in order to indicate skin characteristics as well as remove dirt as stated by Minnix (column 1 lines 33-37).

23. Referring to claim 22 Minnix further teaches that the cosmetic may be formable as a gel (described by Minnix as jelly) (column 10 line 41). It would be obvious to one of

ordinary skill in the art at the time of the invention to modify the invention of Pruche et al. to include a gel similar to that of Minnix in order to make it easier for the user to use.

24. Referring to claim 23 Minnix further teaches that the cosmetic may be formable as a powder or a solid or such (column 10 line 41). It would be obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Pruche et al. to include a gel similar to that of Minnix in order to make it easier for the user to use.

Allowable Subject Matter

25. Claims 13, 16, 17 and 26-31 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claim 13 defines above the prior art of record because the prior art of record fail to teach an encapsulating material that is altered when in contact with the skin.

26. Referring to claims 16 and 17 prior art of record fail to disclose an indicator, which reacts with oil and produces a change in color or intensity of color.

27. Referring to claims 26 and 27 prior art of record fails to suggest a method comprising the step of determining if an indicator is activated.

28. Referring to claims 28 and 29 prior art of record fail to teach a method comprising the steps of an indicator reacting with a substance on the skin and determining appropriate cosmetics for use with the skin condition.

29. Referring to claim 30 prior art of record fail to teach a method comprising a step of a reference to determine a skin condition.

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30. Referring to claim 31 prior art of record fail to teach a method comprising a step of determining cosmetics based on a reference point which determines skin condition.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zoe E. Baxter whose telephone number is 571-272-8964. The examiner can normally be reached on Monday-Friday 7:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor II can be reached on 571-272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Charles A. Marmor, II
Supervisory Patent Examiner
Art Unit: 3735

ZEB

November 13, 2006